HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.21636 OF 1994

Between:

Ramakrishna Pharmaceuticals

. . .Petitioner

AND

Union of India and others

. . .Respondents

:: ORDER ::

Counsel for the petitioner : Shri V.Ravinder Rao

Counsel for the respondents : Shri A.Rajashekar Reddy

20th July, 2007

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PER G.S.SINGHVI, CJ

In this petition, the petitioner has prayed for striking down Rule 106-B of Drugs and Cosmetic Rules, 1945 (for short 'the Rules') and also for issue of a direction to the respondents not to enforce that rule.

The petitioner is engaged in the manufacture and sale of Homeopathic medicines, which categorised as under:

a) Homeopathic potential Dilutions approximately 3000 varieties.

Belladona

Nuxvomica

Phosphorus

b) Mother-tinctures are mostly plant extracts prepared with alcohol as per the standardized procedure.

c) <u>Bio-chemic Tablets and its combinations:</u>

For example, Calc. Phos.

Kali Phos.

Mag. Phos. Etc.

d) Specialities and tonis like:-

Arnica Hair Tonic

Alfalfa tonic

Babivit etc.

d) Sundries like:

Globules

Diskets etc.

In the affidavit filed by him, Sri N.Krishna Rao, Managing Partner of the petitioner, has averred that by virtue of Rule 106-B, which was inserted in the Rules vide notification dated 22.02.2004, the sale of Homeopathic medicines containing more than 12% Alcohol in the bottles of more than 30 milli litres has been prohibited and, in this manner, the business of the petitioner is being adversely affected. The deponent has further averred that none of the members of Drugs Technical Advisory Board (for short 'the Board), which suggested amendment in Rule 106-B comprised of an expert in the field of Homeopathic medicine. Still further, Sri Krishna Rao has averred that the Board which comprised of persons from different branches of medicine could not have recommended the insertion of Rule 106-B, which has the effect of preventing the manufacturers, wholesalers and retailers of Homeopathic medicines from selling the medicines containing 12% Alcohol except in the bottles of 30 milli litres.

In the counter filed on 09.10.2006 by Shri A. Krishna Dev, Assistant Drug Controller, Hyderabad, it has been averred that Rule 106-B was amended on the recommendations of the Sub-Committee of the Board, which comprised of Advisor (Homeopathy) as a special invitee.

Learned counsel for the petitioner says that in view of the averments contained in the counter-affidavit, he is not in a position to seek declaration that Rule 106-B is unconstitutional or ultra vires the rule making power of the Central Government.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the main petition, WPMP Nos.26861 and 26862 of 1994 filed by the petitioner for interim relief are disposed of as infructuous.

G.S.SINGHVI, CJ

20th July, 2007

C.V.NAGARJUNA REDDY, J

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